

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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BILL DRAFT 2011-MG-5B* [v.8] (10/15)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

11/12/2010 10:51:47 AM

Short Title: Establish NC Health Information Exchange Act.

(Public)

Sponsors: Senator Stein./Representative Tillis.

Referred to:

A BILL TO BE ENTITLED
AN ACT TO ESTABLISH THE NORTH CAROLINA HEALTH INFORMATION
EXCHANGE ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 90 of the General Statutes is amended by adding a new
Article to read:

"Article 29A.

"North Carolina Health Information Exchange Act.

"§ 90-413.1. Title.

This act shall be known and may be cited as the "North Carolina Health Information
Exchange Act."

"§ 90-413.2. Purpose.

This Article is intended to improve the quality of health care delivery within this
State by facilitating and regulating the use of a voluntary, statewide health information
exchange network for the secure electronic transmission of individually identifiable health
information among health plans, health care clearing houses, and health care providers in a
manner that is consistent with the Health Insurance Portability and Accountability Act Privacy
and Security Rules.

"§ 90-413.3. Definitions.

The following definitions apply in this Article:

(1) "Business associate" is as defined in 45 C.F.R. 160.103.

(2) "Business associate contract" means a contract that meets the standards
specified in 45 C.F.R. 164.504(e).

(3) "Covered Entity" is as defined in 45 C.F.R. 160.103.

(4) "Disclose" or "disclosure" is as defined in 45 C.F.R. 160.103 as the release,
transfer, provision of, access to, or divulging in any other manner of
information outside the entity holding the information.

(5) "Emergency medical condition" means a medical condition manifesting
itself by acute symptoms of sufficient severity, including severe pain, such
that the absence of immediate medical attention could reasonably be
expected to result in (i) placing an individual's health in serious jeopardy (ii)
serious impairment to bodily functions or (iii) serious dysfunction of any
bodily organ or part.



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- (6) "HIE Network" means the voluntary, statewide health information exchange network overseen and administered by the NC HIE pursuant to this Article.
- (7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191, as amended.
- (8) "Individual" is as defined in 45 C.F.R. 160.103.
- (9) "North Carolina Health Information Exchange" or "NC HIE" means the nonprofit corporation selected by the Governor to serve as a sub-recipient of grant funds from the State-designated entity named by the State pursuant to Section 3013 of the federal Health Information Technology for Economic and Clinical Health Act of 2009.
- (10) "Opt out" means an individual's affirmative decision to disallow his or her protected health information from being disclosed by all or specific covered entities to other covered entities through the HIE Network.
- (11) "Protected health information" is as defined in 45 C.F.R. 160.103.
- (12) "Public health purposes" means the public health activities and purposes described in 45 C.F.R. 164.512(b).

"§ 90-413.4. North Carolina Health Information Exchange; duties and responsibilities.

The NC HIE shall have the following duties and responsibilities:

- (1) To oversee and administer the HIE Network in a manner that ensures all of the following:
- a. Compliance with this Article.
- b. Compliance with HIPAA and any rules adopted under HIPAA, including the Privacy Rule and Security Rule.
- c. Compliance with the terms of any business associate contract the NC HIE enters into with a covered entity participating in the HIE Network.
- d. Notice to all individuals about the HIE Network, including information and education about the right of individuals at any time to opt out or revoke a decision to opt out.
- e. Opportunity for all individuals to exercise at any time the right to opt out or revoke a decision to opt out.
- f. Nondiscriminatory treatment by covered entities of individuals who exercise the right to opt out.
- (2) To develop policies necessary to oversee and administer the HIE Network in accordance with this Article.
- (3) To add, remove, disclose, and access protected health information through the HIE Network in accordance with this Article.
- (4) To enter into a business associate contract with each of the covered entities participating in the HIE Network.
- (5) To grant user rights to the HIE Network to business associates of the covered entities participating in the HIE Network, at the request of the covered entities.
- (6) To facilitate and promote use of the HIE Network by covered entities.
- (7) To periodically monitor compliance with this Article by covered entities participating in the HIE Network.

"§ 90-413.5. Participation by covered entities.

(a) Each covered entity that elects to participate in the HIE Network shall enter into a business associate contract with the NC HIE prior to disclosing or accessing any protected health information through the HIE Network.

(b) Each covered entity that elects to participate in the HIE Network may authorize its business associates to disclose or access protected health information on behalf of the covered entity through the HIE Network in accordance with this Article.

(c) Notwithstanding any State law or regulation to the contrary, each covered entity that elects to participate in the HIE Network may disclose an individual's protected health information through the HIE Network (i) to other covered entities or to researchers for any purpose permitted by HIPAA, unless the individual has exercised the right to opt out and (ii) in order to facilitate the provision of treatment for the individual's emergency medical condition, subject to the requirements set forth in subsection (e) of this section.

(d) Except as otherwise permitted in subsection (e) of this section, each covered entity that elects to participate in the HIE Network is prohibited from doing any of the following with respect to an individual who has exercised the right to opt out:

(1) Disclosing the individual's protected health information to other covered entities or to researchers through the HIE Network for any purpose.

(2) Denying treatment or benefits to the individual based solely upon the individual's decision to opt out.

(e) A covered entity may disclose to other covered entities through the HIE Network the protected health information of an individual who has exercised the right to opt out in order to facilitate the provision of treatment to the individual if all of the following criteria are met:

(1) The reasonably apparent circumstances indicate that (i) the individual has an emergency medical condition (ii) the protected health information maintained in the HIE Network could assist in the diagnosis or treatment of the individual's emergency medical condition, and (iii) any delay associated with attempting to obtain a revocation of the individual's decision to opt out prior to rendering treatment could worsen the individual's emergency medical condition or endanger the life of the individual.

(2) The disclosure through the HIE Network is limited to the covered entities providing diagnosis and treatment of the individual's emergency medical condition.

(3) Each covered entity involved in a disclosure pursuant to this subsection shall document the circumstances and extent of the disclosure in the manner prescribed by the NC HIE for the NC HIE to periodically audit the covered entity's compliance with this subsection.

"§ 90-413.6. Construction and Applicability.

(a) Nothing in this Article shall be construed to:

(1) Impair any rights conferred upon an individual under HIPAA, including all of the following rights related to an individual's protected health information:

a. The right to request restriction of use and disclosure.

b. The right of access to inspect and obtain copies.

c. The right to request amendment.

d. The right to request confidential forms of communication.

e. The right to receive an accounting of disclosures.

(2) Authorize the disclosure of protected health information through the HIE Network to the extent that the disclosure is restricted by federal laws or regulations, including the federal drug and alcohol confidentiality regulations set forth in 42 C.F.R. Part 2.

(3) Restrict the NC HIE or covered entities participating in the HIE Network from disclosing protected health information through the HIE Network for public health purposes, so long as disclosure is permitted by both HIPAA and State law.

1 (4) Prohibit the NC HIE or any covered entity participating in the HIE Network
2 from maintaining in the NC HIE computer system a copy of the protected
3 health information of an individual who has exercised the right to opt out, as
4 long as the NC HIE does not access, use, or disclose the individual's
5 protected health information for any purpose other than for necessary system
6 maintenance or as required by federal or State law.

7 (b) This Article applies only to disclosures of protected health information made
8 through the HIE Network. It does not apply to the use or disclosure of protected health
9 information in any context outside of the HIE Network, including the redisclosure of protected
10 health information obtained through the HIE Network."